

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ELWOOD BARKER, d.b.a. )  
Woody's Construction Company, )  
Appellant, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 979

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

PER W. A. GISSBERG:

This matter, the appeal of a \$100 civil penalty for allegedly causing or allowing an unlawful outdoor fire in violation of respondent's Regulation I, came on for formal hearing before the Pollution Control Hearings Board (W. A. Gissberg, presiding and Art Brown) in Everett, Washington on July 23, 1976.

Appellant Elwood Barker appeared pro se; respondent Puget Sound Air Pollution Control Agency appeared through its attorney, Keith D.

1 McGoffin.

2 Witnesses were sworn and testified. Exhibits were admitted. From  
3 testimony heard and exhibits examined, the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Pursuant to RCW 43.21B.260 respondent has filed its Regulation I  
8 with the Pollution Control Hearings Board and official notice thereof  
9 is hereby taken.

10 II

11 On January 21, 1976, near Marysville in Snohomish County, Elwood  
12 Barker (appellant) directed one of his employees to ignite an open fire  
13 and burn lumber scraps remaining from the residential construction  
14 activity in which appellant was commercially engaged on property owned  
15 by him.

16 III

17 The employee not only followed appellant's instructions but also  
18 placed plastic sheeting, cardboard and paper in the open fire. When  
19 respondent's employee appeared at the scene and indicated that the fire  
20 was unlawful, appellant's employee promptly extinguished the same.

21 IV

22 Appellant appealed the civil penalty of \$100.00 imposed upon him  
23 by respondent. He believed that a fire containing only wood products  
24 could be lawfully burned, such information having been given to him by  
25 an unidentified employee of the Department of Natural Resources.

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V

Respondent's Regulation I, Section 9.02(b)(3) makes it unlawful for any person to cause or allow any outdoor fire for the purpose of demolition of materials or containing asphalt, plastics, or any other substance which normally emits dense smoke.

VI

Appellant, apart from this matter now before the Board, has had no previous violations of respondent's regulations.

VII

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

I

Appellant violated Section 9.02(b)(3) of respondent's regulations.

II

Considering the facts that appellant (1) was honestly mistaken as to the consequence of the fire; (2) as a result of representations made by another government employee; (3) has had no prior violations, and (4) the unlawful fire was promptly extinguished upon request, the civil penalty should be conditionally suspended for one year.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

ORDER

The imposition of the \$100.00 civil penalty is affirmed, but is suspended upon condition that appellant does not further violate

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1 respondent's regulations within one year from the date of this Order.

2 DATED this 28<sup>th</sup> day of July, 1976.

3 POLLUTION CONTROL HEARINGS BOARD

4 W. A. Gissberg  
5 W. A. GISSBERG, Member

6 Art Brown  
7 ART BROWN, Member

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